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*Shorelines*  
Pollution Control Hearings Board

By \_\_\_\_\_

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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL )  
2 DEVELOPMENT PERMIT ISSUED BY )  
3 THE CITY OF WINSLOW TO THE )  
4 CITY OF WINSLOW )

5 RUSSELL J. TRASK,

6 Appellant,

7 v.

8 CITY OF WINSLOW,

9 Respondent.

SHB No. 248

ORDER ON MOTION

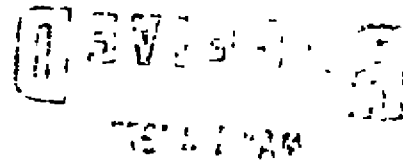
10 Motions by both respondent and appellant were argued before the  
11 Shorelines Hearings Board, (W. A. Gissberg, Chairman, Chris Smith,  
12 Ralph A. Beswick and Robert F. Hintz) on March 23, 1977 in Lacey,  
13 Washington.

14 Appellant, bringing a Motion for Summary Judgment, appeared  
15 through his attorney, J. Richard Aramburu; respondent bringing a Motion  
16 to Dismiss, appeared through its attorneys, Robert W. McKisson and  
17 Ronald J. Trompeter.

18 The agreed chronology of events is as follows:

1. Respondent filed a Shoreline Permit application

Ex A.



1 on December 24, 1975.

2 2. Notice of Application for <sup>Shoreline Management</sup> ~~Shoreline Management~~ <sup>Development</sup>

3 Substantial Development Permit was published on January 7 and 14,  
4 1976 in the Bainbridge Review.

5 3. Notice of Winslow Planning Commission public hearing  
6 was published on April 21, 1976, in the Bainbridge Review.

7 4. Winslow Planning Commission recommended approval of  
8 Shoreline Permit on May 6, 1976.

9 5. Winslow City Council approved the Shoreline Permit on  
10 May 17, 1976.

11 6. Appellant filed his petition for review with the  
12 Shorelines Hearings Board on December 28, 1976.

13 7. The Department of Ecology filed modifications to  
14 chapter 173-14 WAC, including WAC 173-14-070, with the Code Reviser  
15 on October 16, 1975.

16 The issues raised concern adequate notice to appellant and time-  
17 liness of his appeal in light of the applicable statutes and regulations.

18 Notice: Appellant contends that the City ~~did~~ not give sufficient  
19 notice required by law. Specifically, it is contended that the  
20 location and proposed project are not sufficiently described. We  
21 conclude otherwise. The location of the proposal is adequately set  
22 forth as required in the regulation and statute. The purpose of the  
23 proposal is to construct a sewage system, which system is the  
24 substantial development. The pedestrian passage provided is not  
25 the "substantial development." We conclude, therefore, that the  
26

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notice given was adequate.

2       Timely Filing: Respondent contends that appellant failed  
3 to file his appeal within the time provided in RCW 90.58.180.  
4 In reply, appellant relies on his lack of receipt of notice under  
5 the amended version of WAC 173-14-070(1, 2, and 3). The parties  
6 agreed that the appellant was never given the notice required by  
7 the amended regulations. The amended regulation provides notice  
8 requirements above and beyond that required by chapter 90.58 RCW.  
9 We believe that chapter 90.58 RCW did not, prior to the legislative  
10 amendments to the Act in 1976, give the Department of Ecology  
11 authority to set notice requirements beyond that provided by  
12 statute. State v. Rains, 87 Wn.2d 626 (1976). Whether the appeal  
13 is timely must be determined without regard to the amended version  
14 of WAC 173-14-070. The Winslow City Council approved the Shoreline  
15 Permit on May 17, 1976. Appellant filed his petition for review  
16 with this Board on December 28, 1976. The request for review is  
17 clearly beyond the 30-day time for appeal set forth in the RCW  
18 90.58.180(1) and should be dismissed.       4d       4

19       Having considered the Motions, the stipulation of facts and  
20 exhibits, and briefs, the Board concludes that appellant's Motion  
21 for Summary Judgment should be denied and that respondent's Motion  
22 to Dismiss should be granted. NOW THEREFORE,       9

23       IT IS ORDERED that:

- 24             1. Appellant's Motion for Summary Judgment is denied;  
25             2. Respondent's Motion to Dismiss is granted.

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1 DATED this 5<sup>th</sup> day of <sup>April</sup>~~March~~, 1977.

2 SHORELINES HEARINGS BOARD

3   
4 W. A. GISSBERG, Chairman

5   
6 CHRIS SMITH, Member

7   
8 RALPH A. BESWICK, Member

9   
10 ROBERT F. HINTZ, Member